

In the Matter of Certificates of Service Nos. C-143343 E-257513
Issued to: THEODORE W. RITCHIE, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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THEODORE W. RITCHIE, JR.

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 1 December, 1949, an Examiner of the United States Coast Guard at New York City suspended Certificates of Service Nos. C-143343 and E-257513 issued to Theodore W. Ritchie, Jr., upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as Junior Engineer on board the American S. S. SANTA CECILIA, under authority of the documents above described, on or about 20 June, 1947, he failed to join said vessel at Buenaventura, Colombia, without reasonable cause.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. The Examiner entered a plea of "guilty" to the charge and specification for Appellant.

Thereupon, the Investigating Officer made his opening statement which included a summary of the service upon Appellant and the investigation which had been made.

In defense, Appellant testified that he had missed the ship because he had lost his pass and was put in jail by the Captain of the Port at Buenaventura while he was attempting to get back to the SANTA CECILIA.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea and entered an order suspending Appellant's Certificates of Service Nos. C-143343 and E-257513, and all duplicates thereof and all other valid documents issued to him, for a period of six months on another ship acting as a fireman-watertender.

Appellant's prior disciplinary record consists of a revocation of his certificate in 1943 for illegal use of certificates fraudulently obtained and a four month suspension in 1945 for leaving his watch without permission and for absence from the ship without leave. He is 35 years of age and has been going to sea for approximately 20 years. Appellant is married, has two children and a sick wife to support.

OPINION

Several points have been mentioned on appeal which pertain primarily to the failure of the Examiner to adequately protect Appellant's rights during the course of the hearing and the lack of evidence to support the specification and charge. Because of the disposition to be made of this case, it will not be necessary to examine independently all of Appellant's arguments.

Proceedings under Title 46 United States Code, section 239, are for the purpose of maintaining discipline and safety on board American merchant vessels. Failure to join is a violation of the contractual obligation incurred when the articles for a voyage are signed. The offense is aggravated when there is evidence that the failure to join delayed the ship or caused it to go to sea while undermanned. There is nothing affirmative in the record to show that either of these conditions existed in this case.

When the offense before the Examiner is "failure to join," a burden rests on the Appellant to negative the implication that he has been guilty of "misconduct" by breach of the ship's articles. Appellant tried to establish by his own testimony that he was not at fault. But the value of his testimony is weakened by the fact that it was not taken under oath and it is not clear as to the original reason for his arrest. Appellant stated that he was arrested for insulting an official (R. 7) and also that he was arrested for purposes of investigation. (R. 9) If he missed the ship due to the former reason, it was due to his own behavior and, consequently, not probation for one year from 1 December, 1949.

From that order, this appeal has been taken, and it is urged that the Examiner failed to correctly advise Appellant of his Constitutional rights at the hearing; that the Examiner improperly failed to enter a plea of "not guilty" for Appellant; that the Examiner mislead Appellant by his instructions pertaining to the inference to be drawn if Appellant had failed to testify; that the uncontradicted testimony of Appellant establishes that he did not fail to join without reasonable cause since it was due to the capricious conduct of the port captain; that the hearing Examiner exceeded his authority in suspending the certificates of service issued to Appellant because Congress has fixed a statutory penalty for failure to join. (Title 46 U.S.C. 701.) For these reasons it is respectfully submitted that the order should be set aside.

APPEARANCES: Messrs. Freedman, Landry and Lorry Milton M. Borowsky, Esq. of Philadelphia for Appellant

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 20 June, 1947, Appellant was in the service of the American S. S. SANTA CECILIA, acting under authority of his duly issued certificate of service in the capacity of Junior Engineer, while the ship was at the port of Buenaventura, Colombia.

Appellant had gone ashore the preceding evening on authorized shore leave. While ashore, he lost his pass and was not permitted to return to the ship the following morning when he arrived at the dock sometime between 0800 and 0900. He reported this fact to the company representative and was sent to see the Captain of the port at Buenaventura. Appellant and the port captain engaged in an argument concerning Appellant's right to go aboard the SANTA CECILIA. As a result of this dispute, Appellant was placed under arrest for insulting an official and his ship sailed without him. Appellant spent ten days in jail and was fined \$60.00. He returned to the United States on excusable. The presence of other evidence, mentioned below, makes it unnecessary to attempt to resolve this conflicting testimony.

Appellant's uncontradicted testimony establishes that he was in jail for ten days at Buenaventura and paid a fine of \$60.00. Since there were no aggravating circumstances brought out in connection with the offense alleged in the specification, this is a comparatively minor offense of failure to join. In such cases, the imposition of fines and penalties by civil authorities have been taken into consideration by the Coast Guard before imposing any additional order. In my opinion, Appellant has been sufficiently punished by the fine and imprisonment without further action being necessary by the Coast Guard. It is, therefore,

ORDER

ORDERED AND DIRECTED that the Order of the Examiner dated 1 December, 1949, should be VACATED, SET ASIDE AND REVERSED.

The case is remanded to said Examiner with instructions to dismiss the charge and specification proffered against Appellant arising from the incident herein discussed.

A. C Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 17th day of April, 1950.